

# Competition 2026

For a competition-oriented  
economic policy

# Legal notice

## CONTACT

Monopolies Commission

Kurt-Schumacher-Straße 8

53113 Bonn

Germany

Tel.: +49 228 338882-0

Email: [info@monopolkommission.bund.de](mailto:info@monopolkommission.bund.de)

[www.monopolies-commission.de](http://www.monopolies-commission.de)

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# 1

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## Concentration reporting




## In brief

 Reporting on market concentration forms part of the Monopolies Commission's core statutory remit: since 1978, it has been examining trends in corporate concentration in Germany. In its 2026 Main Report, the Monopolies Commission focuses in particular on the manufacturing sector, energy-intensive industries and the high-tech sector. It is here that trends in costs, productivity and domestic value added are particularly evident, as is how companies are responding to changing business conditions.

### 1 – How is value added by the 100 largest companies in Germany developing, and how are they responding to changing business conditions?


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#### PROBLEM

 The concentration report shows that the 100 largest companies remain of great significance for economic performance, employment and political influence, even though their aggregate shares of value added and employment are tending to decline in the long term. From a competition policy perspective, it is not so much size in itself that is problematic, but rather the possibility that economic power, political influence, ownership structures or interlinked personnel may indirectly impair competition.

At the same time, a large proportion of these companies are showing a decline in domestic value-added. In the manufacturing sector in particular, global value-added is growing faster than domestic value-added, meaning that global corporate growth is becoming increasingly decoupled from Germany as a business location.

#### CONTEXT

 The 'Top 100' are determined on the basis of their domestic value added in order to measure their macroeconomic significance in a way that is comparable across sectors. In 2024, their share of total macroeconomic value added stood at 13.9 per cent. At the same time, personnel links and merger activity remained evident, but were significantly lower than in previous decades when viewed over the long term.

An analysis of the 'Top 100' excluding banks, insurance companies and foreign parent companies shows that the decline in the domestic share is occurring primarily in the

manufacturing sector. These companies have often grown globally, whilst domestic value added has stagnated or declined; this trend therefore points more to location- and structural issues than to a general weakness of the companies.

## RECOMMENDATIONS



In the Monopolies Commission's view, the relative shift of value added in the manufacturing sector abroad is a response to location conditions and is therefore driven not only by cyclical factors but also by structural ones. Growth abroad, particularly within the European single market, is, however, primarily an expression of free entrepreneurial decisions and does not in itself constitute a competition problem. From the Monopolies Commission's perspective, this shift only becomes relevant where avoidable, home-grown locational disadvantages distort such decisions. This gives rise to three recommendations:

- 1** A competition-oriented industrial policy should examine the extent to which the weakness of the manufacturing sector stems from avoidable regulatory burdens and should remove such distortions without hindering market-driven adjustment processes.
- 2** Where the state intervenes, it should prioritise the general framework conditions and take a horizontal approach, rather than protecting individual sectors or locations. This includes reducing regulatory components of energy prices, bureaucratic burdens and barriers to investment and adjustment.
- 3** Sector- or company-specific support should only be provided where it addresses a clearly identified market or transformation failure and is designed in a way that is open to competition. **70**

## 2 – How has the energy price shock affected price mark-ups and productivity in the manufacturing sector?

### PROBLEM



The energy price shock is more than just a temporary cost burden, particularly for the manufacturing sector. It is hitting an industry that has already been showing signs of a slowdown for several years. If certain sectors are less able than others to absorb rising costs or pass them on in the face of international competition, margins and productivity will fall and the sector's long-term prospects will deteriorate. This could permanently alter Germany's industrial structure and jeopardise prosperity.

## CONTEXT



The industrial slowdown was already becoming apparent before the most recent crises. Since 2017, price-adjusted value added and labour productivity in particular have shown weaker growth. The crises of recent years have exacerbated this trend. Since 2021, price mark-ups in the manufacturing sector have also fallen significantly. Although prices rose significantly overall by 2023 compared with 2019, companies' costs increased even more sharply and could only be passed on to a limited extent.

At the same time, a clear divide is evident within the manufacturing sector. In energy-intensive industries, costs rose more sharply and productivity and price mark-ups fell more significantly than in non-energy-intensive industries, which proved to be more resilient overall. High-tech sectors, by contrast, recorded rising price mark-ups and productivity, but were unable to keep pace in an international comparison.

International integration also plays a role. Higher import intensity was associated with more favourable trends in non-energy-intensive industries. In energy-intensive industries, the results also point to possible substitution effects relative to domestic intermediate goods production. Higher export intensity tended to be accompanied by weaker trends in price mark-ups. Comparatively similar employment trends despite differing developments in value added also point to labour market rigidities.

## RECOMMENDATIONS



Competitive business conditions determine whether industrial capacity in the manufacturing sector can be productively renewed or whether it comes under sustained cost pressure. At the same time, business conditions influence how international trade linkages play out. Imports can cushion cost increases, but they can also displace domestic intermediate goods production if domestic production conditions remain uncompetitive in the long term. From the Monopolies Commission's perspective, this gives rise to two recommendations:

- 1** Policymakers should take a long-term view and improve the general business environment. Market-driven structural changes should not be held back by the permanent protection of existing structures.
- 2** Labour market policy should facilitate professional mobility and effective competition for skilled workers. Barriers to mobility and recruitment should be removed. This also includes examining the extent to which employment protection rules and non-wage labour costs hinder mobility and recruitment. Digital and AI-related skills, along with an innovation-oriented mindset, should be fostered from an early stage. **70**

# 2

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## **Assessment of antitrust decision-making practice**



## In brief



With this chapter, the Monopolies Commission fulfils its statutory mandate to assess decision-making practice under competition law. This main report focuses on the topics of damages for breach of competition law, competition in the defence sector, the fuel measures package and ex-post evaluation, as these are currently of particular practical relevance.

## 1 – How can the enforcement of antitrust damages claims be made more effective in practice?

### PROBLEM



The practical enforcement of antitrust damages claims remains difficult. It is often not economically viable to pursue smaller, scattered claims because the individual loss is minimal whilst the procedural costs are high, and companies have so far lacked a legally certain instrument for collective enforcement. Furthermore, quantifying the amount of loss is particularly challenging because the hypothetical competitive price in the absence of the cartel infringement cannot be observed, and econometric expert reports often lead to complex and protracted disputes in practice.

### CONTEXT



Antitrust damages compensate for losses whilst simultaneously strengthening the enforcement of competition rules. Despite the legal framework set out in Sections 33a et seq. of the German Act against Restraints of Competition (GWB), however, its practical enforcement remains complex, fraught with legal uncertainty and protracted. At the same time, recent decisions by higher and supreme courts show that more practical approaches and legal certainty are gradually emerging on key legal issues such as the aggregation of claims and the assessment of damages.

### RECOMMENDATIONS



Against this background, the enforcement of antitrust damages claims should be further improved. The Monopolies Commission recommends:

- 1** The courts should permit the use of existing instruments for the consolidated enforcement of scattered damages in the interests of effective enforcement of the law. Class action recovery, which has been available with legal certainty since the Federal Court of Justice’s decision, can help ensure that even smaller antitrust damages can be claimed and that victims do not remain structurally at a disadvantage compared to the infringing parties.
- 2** When assessing damages, the courts should, depending on the individual case, draw on econometric regressions or more flexible estimates based on a sound factual foundation. Regression analyses may be appropriate in suitable cases, but must not effectively become a prerequisite for claiming antitrust damages if the available data or the principles of procedural economy argue against it.
- 3** The procedural framework should be further developed to make antitrust damages proceedings more efficient, faster and more manageable. This can be achieved, in particular, by grouping similar cases more closely together, further concentrating jurisdiction and providing the courts with effective tools for dealing with voluminous case files.

## 2 – How can procurement and market structures in the defence sector be kept open to competition?

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### PROBLEM



Competition in the defence sector is structurally restricted. Outdated security and industrial policy considerations on the part of Member States hinder open competition. Joint ventures between established manufacturers and defence conglomerates can reinforce dependencies and further impede market access for smaller suppliers. This is without prejudice to the fact that cooperation between companies may be objectively justified for the necessary rearmament and is not, in principle, precluded under competition law.

### CONTEXT



The defence sector has gained considerable importance in light of the changed security situation and rising defence expenditure – both in Germany and at European level. It is therefore particularly important, , to organise the necessary rearmament efficiently. Competition is essential for this.

## RECOMMENDATIONS



Against this background, competition in the defence sector should be specifically strengthened and competitive risks should continue to be closely monitored:

- 1** Cooperation and mergers in the defence sector should be carefully assessed under competition law. This applies in particular to joint ventures between established manufacturers and diversified defence conglomerates, which can raise barriers to market entry and increase dependencies.
- 2** A more far-reaching sector-specific exemption for the defence sector under competition law should not be introduced. Current legislation does not fundamentally preclude necessary cooperation, whilst blanket relaxations can entrench inefficient structures and weaken incentives for innovation.
- 3** Defence procurement should become more competition-oriented and innovation-friendly. Joint procurement, greater interoperability, greater involvement of start-ups and SMEs, and simpler and faster procedures can better harness competitive potential.

## 3 – How should competition policy respond to rising fuel prices?

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### PROBLEM



Following the outbreak of the Iran War and the blockade of the Strait of Hormuz, the supply of crude oil and petroleum products became scarce, leading to a rise in fuel prices in Germany. However, the rise in prices in Germany – which has been above the European average and, above all, more rapid – is likely to be attributable not only to the cost shock but also to structural competition problems in the intermediate markets (refineries and fuel wholesalers).

## CONTEXT



The legislature has responded to the rises in fuel prices with a series of measures designed to address the competition problems in the wholesale markets, which are also the subject of the ongoing Section 32f GWB proceedings before the Federal Cartel Office. In addition, measures such as the ‘12 o’clock rule’ and the ‘petrol station discount’ were introduced, which directly intervened in price formation on the fuel markets.

## RECOMMENDATIONS



Against this background, the Monopolies Commission recommends, above all, resolving the structural competition problems in the wholesale markets and at the refinery level:

- 1** The Federal Cartel Office should vigorously pursue the proceedings initiated under Section 32f of the Act against Restraints of Competition (GWB) on the basis of the instruments and data at its disposal. In this regard, the new data collection in accordance with Section 47k(7) of the draft 12th Amendment to the GWB, as proposed in the draft bill, may improve the data basis. In principle, however, the necessary data should be collected in the respective proceedings.
- 2** Sustainable structural solutions are preferable to sector-specific market interventions and price controls that are questionable from a regulatory perspective. It is doubtful whether proceedings under the newly introduced Section 29a of the GWB are significantly faster and more effective than structural measures.
- 3** Interventions in free price formation, such as the ‘petrol discount’, should be avoided in future because they are costly, provide asymmetric relief and, above all, dampen price signals caused by scarcity. The petrol discount was not passed on in full to consumers. Regional differences in the passing-on of the discount point to competition problems. The ‘12 o’clock rule’ should be evaluated and, where appropriate, further developed.

## 4 – How can ex-post evaluations contribute to the evidence-based development of merger control and competition policy?

### PROBLEM



Merger control is always a decision made under uncertainty, because the competitive effects of a merger can only be assessed prospectively before it is implemented. Without ex-post evaluations, it therefore often remains unclear whether the assessment tools used were appropriate and whether the underlying mechanisms of impact, as well as any remedial measures, accurately reflected actual market developments.

### CONTEXT



The study on the merger of OMV and EG Group, summarised here as an example based on the ex-post evaluation, shows that price effects in the petrol station market cannot be explained solely by local competition between petrol stations. Rather, the results suggest that the observed price increases are primarily linked to changes in vertical supply structures and refinery supply. Ex-post evaluations bring such mechanisms to light and can thus help to better target merger control, market monitoring and crisis management policies.

### RECOMMENDATIONS



Against this background, ex-post evaluations should be utilised more extensively as a tool for an adaptive and evidence-based competition policy:

- 1** Ex-post evaluations should be used systematically to draw lessons from past decisions for future proceedings and to further develop merger control on an evidence-based basis. They make it possible to test prognostic assumptions retrospectively against actual market developments, thereby promoting institutional learning.
- 2** Ex-post evaluations should be based on a transparent and robust empirical methodology. In particular, a comprehensible counterfactual design is required, one that discloses comparison groups, time periods and control variables, thereby enabling robust conclusions to be drawn about the effects of a merger.
- 3** The results of ex-post evaluations should be systematically incorporated into future merger control proceedings, assessment tools and remedial measures. The case study provided as an example shows that ex-post evaluations can

provide additional insights into the competition mechanisms that are actually effective.

# 3

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**Industrial electricity prices as a  
means of industrial policy**



## Fehler! Textmarke nicht definiert. In brief



Industrial policy is back at the centre of the economic policy debate. The political debate is no longer about whether industrial policy makes sense, but solely about how it should be structured. In this chapter, the Monopolies Commission demonstrates that industrial policy should not stifle competition, but rather strengthen it. This applies both to the general industrial policy strategy and to the approach to high electricity prices as a major cost factor for industry.

## 1 – How can industrial policy and competition policy work together to strengthen the competitiveness of the European single market?

### PROBLEM



The European single market and Germany as an industrial location are under considerable pressure to adapt. Geopolitical tensions, dependencies in critical supply chains, rising energy costs and the need for decarbonisation are increasing the pressure to act. Added to this are structural weaknesses such as a growing innovation gap compared with the US and China, a shortage of skilled workers, as well as high regulatory burdens and protracted approval procedures.

### CONTEXT



Industrial policy is intended to influence economic development in a targeted manner and is currently understood, above all, as a response to a lack of innovation, transformation and geopolitical vulnerability. A distinction must be made between horizontal measures, which improve the framework conditions for many companies, and vertical interventions, which specifically promote individual sectors, technologies or companies. From the Monopolies Commission's perspective, this distinction is crucial: horizontal measures tend to strengthen the single market, whilst vertical interventions interfere more heavily with market processes and pose greater risks to competition, innovation and the allocation of resources. However, the latter should not be ruled out – provided they address a clearly diagnosed market or transformation failure and remain open to competition, transparent and time-limited.

## RECOMMENDATIONS



The Monopolies Commission regards competition as an indispensable part of a successful industrial policy. This gives rise to three policy priorities:

- 1** Industrial policy measures should focus on clearly justified cases of market or transition failure and be primarily geared towards future-oriented and strategically important key technologies.
- 2** Measures to complete the European single market should take priority, as it is precisely there that better framework conditions for innovation, scaling and competition can be created for all businesses.
- 3** Where support is provided to individual sectors or technologies, the instruments should be open to competition, transparent, coordinated at European level and, where possible, of limited duration.

## 2 – How can the competitive conditions for German industry be improved with regard to the cost of electricity?

### PROBLEM



High electricity prices are a burden on German industry in international competition. In 2024, Germany's average price of around 14 ct/kWh was above the EU-27 average of 12 ct/kWh and significantly higher than that of the USA at 8 ct/kWh. This is particularly relevant for electricity-intensive sectors such as aluminium production. If electricity, as a key factor of production, is permanently more expensive than in key competitor regions, investment and value creation could increasingly be shifted abroad.

### CONTEXT



Electricity is a major cost factor for industry, but its significance varies greatly between sectors. On average across all 163 sectors examined, the direct share of electricity in intermediate inputs is only 2.29 per cent. In many sectors, it is below 5 per cent, whilst in individual sectors such as aluminium or pulp it exceeds 15 per cent. At the same time, there is already a dense network of vertical relief measures such as electricity price compensation, the industrial electricity tariff, reductions in electricity tax and subsidies for grid charges. These measures are applied according to varying criteria, create red tape, sometimes disadvantage

smaller companies and pose risks to competition. The simulation in this chapter also shows that the overall price effects of various subsidy scenarios differ only slightly.

## RECOMMENDATIONS



To improve the competitive conditions for German industry with regard to the cost factor of electricity, the Monopolies Commission derives the following policy priorities:

- 1** Where relief on electricity prices is sought, priority should be given to horizontal, simple and competition-friendly measures. These include, above all, broad-based relief on non-market-determined components of electricity prices.
- 2** Sector-specific or company-specific relief measures – such as electricity price compensation, an industrial electricity tariff or subsidies towards grid charges – should only be used in a targeted and strictly limited manner. They should be clearly justified on objective grounds, designed as simply as possible and structured in such a way that they do not distort competition.
- 3** The electricity market design should be reformed so that electricity can be supplied in a structurally cheaper and more reliable manner. As high prices also result from systemic weaknesses such as grid bottlenecks, inadequate price signals and high redispatch and grid costs, state aid is no substitute for reforming the system. In particular, grid charges should be reformed, incentives for grid-friendly behaviour strengthened and the grids further digitised.

# 4

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**A competition-oriented economic policy for the AI transformation**



## In brief



The industrial use of artificial intelligence (AI) deserves particular attention because it serves as a prime example of how the companies that form the backbone of the German economy are responding to these upheavals. Germany and the EU can support European companies in adapting to these changes through a competition-oriented AI economic policy that breaks down dependencies, establishes a legally secure framework for the use of AI and promotes AI across the board. In addition to the academic literature, this chapter is based on numerous discussions with representatives of trade associations and companies of various sizes and from different sectors, which have provided a broad picture of the actual obstacles and areas where action is needed.

## How can Germany accelerate the AI transformation of industry in a way that promotes competitiveness?

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### PROBLEM



The AI transformation of German industry is not progressing on the necessary scale. Three factors in particular are holding back the AI transformation of German industrial companies: significant business and legal uncertainty, risk aversion regarding long-term investments, and sluggish organisational processes within the companies themselves. If these obstacles persist, there is cause for concern that German industry will fall further behind in terms of productivity, competitiveness and value creation.

### CONTEXT



The AI transformation is taking place against a backdrop of weak growth, geopolitical tensions and existing locational disadvantages in Germany and Europe. AI is a cross-cutting technology with considerable potential for innovation, efficiency and new competitive advantages. However, this potential is not freely available: the core layers of the AI stack are dominated by a small number of providers, most of whom are based outside Europe. This creates dependencies. At the same time, adoption is progressing too slowly and on too narrow a scale. As market forces alone have so far failed to generate this pace and breadth, there is considerable pressure for economic policy action. It is therefore crucial to take action at the right point. The real competitive advantage of German industry lies not in the stack, but at

the application level: in specialist knowledge built up over decades and valuable data from its own production processes. Harnessing and protecting this advantage is the central task of economic policy.

## RECOMMENDATIONS



The AI transformation requires a competition-oriented economic policy that makes targeted use of government intervention without undermining competition. To this end, three pillars should be consistently coordinated: competition policy, regulation and industrial policy.

- 1 Competition policy:** The Digital Markets Act (DMA) should be adapted to address new competition risks across the AI stack and enforced resolutely. This involves, in particular, focusing on AI services and further developing behavioural obligations in such a way as to ensure open and contestable markets, whilst limiting tendencies towards market foreclosure through vertical integration, self-preferencing and exclusive access to key AI resources. In areas where the DMA does not apply, Section 19a of the German Act against Restraints of Competition (GWB) provides the Federal Cartel Office with the flexibility and scope to intervene.
- 2 Regulation:** The EU AI Act is, in principle, the right approach and an important step as a uniform European legal framework. However, it should be implemented and further developed in such a way as to avoid unnecessary burdens on innovation and diffusion. In general, a paradigm shift in government regulation should be initiated – moving away from attempts at early and comprehensive regulation of new technologies towards regulation that only comes into effect once experience has been gained in the markets. Particularly for small and medium-sized enterprises, disproportionate compliance burdens, double regulation and uncertainties regarding risk classification should be mitigated, so that the AI Act creates legal certainty without hindering the widespread use of AI.
- 3 Industrial policy:** Industrial policy should not promote individual national or European ‘champions’, but rather enhance the widespread use of AI. Where high risks, dependencies or coordination problems exist, the state should act in a targeted manner as an anchor customer for European and German AI solutions, thereby supporting demand, testing and scaling. To ensure the widespread adoption of AI, IP transfer processes from research institutions should be accelerated and AI-related skills development strengthened.